

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUAN D. BULLOCK,

Defendant-Appellant.

UNPUBLISHED

March 14, 2006

No. 258579

Wayne Circuit Court

LC No. 04-003502-02

Before: Hoekstra, P.J., and Neff and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for armed robbery, MCL 750.529, and felonious assault, MCL 750.82. Defendant was sentenced to 4 ½ to 15 years' imprisonment for the armed robbery conviction and two to four years' imprisonment for the felonious assault conviction. We affirm in part and vacate in part.

I

Defendant first argues that the evidence presented at trial was insufficient to sustain his armed robbery and felonious assault convictions, and therefore, his convictions should be reversed. We disagree. The Court reviews the evidence “in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.” *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). In doing so, “[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime.” *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

Defendant argues that the prosecution presented insufficient evidence for a rational trier of fact to conclude that he committed armed robbery as an aider and abettor. We disagree. The elements of armed robbery require the prosecution show: (1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute. *People v Carines*, 460 Mich 750, 757-758; 597 NW2d 130 (1999). To support a finding that the defendant aided and abetted a crime, the prosecution must show that: (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *Id.* “An aider and abettor's state of

mind may be inferred from all the facts and circumstances. Factors that may be considered include a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime.” *Id.*

The prosecution presented sufficient evidence from which a reasonable trier of fact could find that defendant aided and abetted in the armed robbery of Jeremy Mallo. There was testimony that defendant stood next to Sedric Hall and Jermaine Davis, while Sedric pointed a gun at Jeremy and demanded Jeremy’s money, and testimony that defendant grabbed items from Jeremy’s person including his cellular phone.

Further, Jonathan Meyers testified that he heard gunshots while at work and when he went outside he witnessed three men running away from the scene and one of the men had a gun in his hands. Jonathan followed the men to an apartment building and afterward Jonathan contacted campus security. Thereafter, Jonathan led the policemen to the apartment building where the men retreated and the police located three men standing in the hallway of the building who matched the description of the men Jonathan witnessed running away from the scene. Officer Brian Kussy identified defendant as one of the three men he found in the hallway on that night.

At least three people connected defendant to possessing Jeremy’s cellular phone: Jermaine testified that defendant grabbed the cellular phone from Jeremy; Officer Kussy testified that defendant had the cellular phone on his person when arrested; and Sedric testified that defendant was in possession of the cellular phone when apprehended by the police. When Officer Kussy questioned defendant regarding the cellular phone, defendant was unable to provide the officer with any information regarding the cellular phone, such as the cellular phone number. Although Jermaine’s testimony was inconsistent with Sedric’s testimony regarding defendant’s involvement in the robbery, Jermaine’s testimony, that defendant was the person who grabbed the cellular phone from Jeremy during the robbery, gives credence to the testimony presented by Officer Kussy regarding defendant’s possession of the cellular phone.

Defendant further argues that his felonious assault and armed robbery convictions violate his constitutional protections against double jeopardy. We agree.

Jeremy testified that he was confronted by three men, one of whom was armed with a shotgun and demanded his money. When he failed to immediately comply, defendant, who was one of the others in the group that confronted the victim, approached him and took several items, including a cell phone that was attached to the victim’s pants pocket. Jeremy further testified that, after defendant removed the cell phone from his pants, he looked back at the gunman “[then] felt [a] blow come to [his] head.” Thereafter, his assailants fled the scene. The blow that the victim received knocked him to the ground and opened a wound that required stitches to close. In its findings of facts, the trial court found that “defendant assisted in the armed robbery by striking [the victim] with an unknown object which caused physical injury to [the victim].”

In light of the testimony of the victim and the trial court’s findings of fact, we agree with defendant that the felonious assault was part of, rather than separate and distinct from, the armed robbery, and that, therefore, his conviction of both armed robbery and felonious assault violates double jeopardy protections against multiple punishments for the same offense. *People v Colon*, 250 Mich App 59, 62; 644 NW2d 790 (2002). Simply stated, the assault on the victim by

striking him with an unknown object was a seamless part of the robbery, and incidental to defendant taking the victim's cell phone. Accordingly, we vacate defendant's conviction and sentence for felonious assault. See, e.g., *People v Herron*, 464 Mich 593, 609; 628 NW2d 528 (2001) (the remedy for a double jeopardy violation involving multiple punishments is to affirm the greater offense and vacate the lesser conviction).

Affirmed in part, vacated in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Donald S. Owens